

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-326-C - ORDER NO. 2010-337

JULY 13, 2010

IN RE: State Universal Service Support of Basic	)	ORDER RULING ON THE
Local Service Included in a Bundled Service	)	ISSUE OF WHETHER
Offering or Contract Offering	)	BASIC LOCAL
	)	EXCHANGE LINES
	)	WHICH ARE PART OF
	)	BUNDLED OR
	)	CONTRACT OFFERINGS
	)	ARE ELIGIBLE FOR
	)	SUPPORT FROM THE
	)	STATE UNIVERSAL
	)	SERVICE FUND

I. INTRODUCTION

The issue before the Public Service Commission of South Carolina (“Commission”) is whether to continue to provide universal service support to carriers of last resort for the provision of basic local exchange telephone service when it is provided as part of a bundled or contract service offering.

The issue was raised by the South Carolina Cable Television Association, Comp South, tw telecom of south carolina, llc, and NuVox Communications, Inc. (collectively, the “CLECs”) in Docket No. 1997-239-C, In Re Proceeding to Establish Guidelines for an Intrastate Universal Service Fund. In pleadings before the Commission in Docket No. 1997-239-C, the CLECs argued that the Commission should address the issue of whether State Universal Service Fund (“USF”) support should be provided for lines that are sold as part of bundles or contract offerings. See, e.g., Motion Requesting Review of

Additional USF Issues, dated July 3, 2008. In the spring of 2009, the Commission scheduled oral arguments on various motions pending in Docket No. 1997-239-C, including the motion by CLECs to review the question of support for lines sold as part of bundles or contract offerings. See Notice of Oral Arguments in Docket No. 1997-239-C, dated May 7, 2009.

In the meantime, the issue of State USF for basic local service included in bundles and contract offerings was raised in the course of discussions related to legislation being considered by the General Assembly during the 2009 legislative session. The legislation, known as the Customer Choice and Technology Investment Act of 2009 (“Act”), was subsequently codified as S.C. Code Ann. § 58-9-576(C). The Act allows local exchange carriers (“LECs”) to opt into a relaxed form of regulation which essentially does away with the electing LEC’s carrier of last resort obligation, i.e., the carrier would no longer have an obligation to provide basic local service to all residential and single-line business customers within its defined service area. To ease this transition, the Act provides that the carrier must continue providing service to stand-alone basic residential lines that were in service prior to the LEC’s election under the Act (the “grandfathered lines”). As part of its election, the electing LEC is required to phase out its State USF withdrawals, except that it may petition the Commission for continued support of the grandfathered lines that remain in service.

The General Assembly, in enacting the portion of Section 58-9-576(C) that allows electing carriers to continue to receive State USF funding for stand-alone basic residential lines, expressly stated:

(10) For those LECs that have not elected to have rates, terms, and conditions for their services determined pursuant to the plan described in this subsection, the Interim LEC fund and state USF shall continue to operate in accordance with Sections 58-9-280(E), (L), and (M). [and]

(11) For those LECs that have not elected to operate under this section, nothing contained in this section or any subsection shall affect the current administration of the state USF nor does any provision thereof constitute a determination or suggestion that only stand-alone basic residential lines should be entitled to support from the state USF.

(Emphasis added.)

As part of a compromise to allow the proposed legislation to proceed, the parties agreed to ask the Commission to prioritize the issue of whether basic local service should receive State USF support when it is included in a bundled service offering or contract offering, and to address the issue separate and apart from and prior to any other pending issues. See Letter from C. Dukes Scott to Charles L.A. Terreni, dated May 28, 2009, in Docket No. 1997-239-C (“ORS Letter”). The Commission granted the request and held the other issues in abeyance. See Commission Directive dated June 10, 2009, in Docket No. 1997-239-C. Following a status conference, Hearing Officer F. David Butler issued a directive dated July 31, 2009 which, among other procedural rulings, established a new docket, Docket No. 2009-326-C, to consider the issue of whether basic local service should receive State USF support when it is included in a bundled service offering or contract offering.

A hearing was held before the Commission on November 20, 2009, with Vice Chairman John E. “Butch” Howard presiding. Scott Elliott, Esquire, and Susan S. Masterton, Esquire, appearing *pro hac vice*, represented United Telephone Company of the Carolinas, LLC, d/b/a CenturyLink (“CenturyLink”). CenturyLink presented the Direct, Rebuttal, and Surreply Testimony of Ann C. Prockish. Burnet R. Maybank III, Esquire, and Bruce Hurlbut, Esquire, *pro hac vice*, represented Windstream South Carolina, LLC (“Windstream”). Windstream presented the Direct and Surreply Testimony of William F. Kreutz. M. John Bowen, Jr., Esquire, and Margaret M. Fox, Esquire, along with Thomas J. Navin, Esquire, *pro hac vice*, represented the South Carolina Telephone Coalition (“SCTC”). The SCTC presented Direct and Surreply Testimony of Glenn H. Brown and H. Keith Oliver. Frank R. Ellerbe III, Esquire, and John J. Pringle, Jr., Esquire, represented the South Carolina Cable Television Association (SCCTA), Competitive Carriers of the South, Inc., and tw telecom of south carolina, llc (collectively referred to as “CLECs”). CLECs presented the Direct, Reply, and Surreply Testimony of Joseph Gillan. John J. Pringle, Jr., Esquire, also represented Sprint Nextel Corporation, Sprint Communications Company, LP, and NuVox Communications, Inc. (“Sprint and NuVox”). Sprint and NuVox did not present a witness. Patrick W. Turner, Esquire, represented BellSouth Telecommunications, Incorporated d/b/a AT&T South Carolina (“AT&T”). AT&T did not present a witness. Steven W. Hamm, Esquire, represented Verizon Communications, Incorporated, and Verizon South, Incorporated (“Verizon”). Verizon did not present a witness. Nanette S. Edwards, Esquire, and

Courtney Edwards, Esquire, represented the Office of Regulatory Staff (“ORS”). ORS presented the Direct, Reply, and Surreply Testimony of Dawn M. Hipp.

II. BACKGROUND AND HISTORY OF THE STATE USF

In light of the fact that it has been over eight years since we issued Order No. 2001-419 establishing and implementing the State Universal Service Fund (“State USF”), it is appropriate to provide some background on universal service and the State USF.

Simply put, universal service is the concept that everyone, regardless of where they live, should have access to basic local telephone service at affordable rates, and that rates and services should be comparable in rural and urban areas. See Tr. at 277. The challenge in achieving this laudable objective is that service in densely populated urban areas is relatively inexpensive to provide, while service in sparsely populated rural areas can be very costly. See Hearing Exhibit No. 5 (The average monthly cost of providing service in South Carolina ranges from \$17.81 where there are more than 10,000 households per square mile, up to \$114.97 for areas with 0-5 households per square mile.)

Unlike other public utility services, telecommunications service is carried over a two-way network, and the service becomes more valuable as more people are connected to the network. Tr. at 278. In recognition of this public good, both Congress and the South Carolina General Assembly have codified policies to preserve and advance universal service. Section 254 of the Federal Telecommunications Act of 1996 sets forth universal service principles, the first of which is that quality services should be available at just, reasonable, and affordable rates. 47 U.S.C. § 254(b)(1). Another basic principle is that customers in rural and high-cost areas should have access to telecommunications

and information services, including advanced services, that are reasonably comparable to those provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. 47 U.S.C. § 254(b)(3).

Section 254 also provides that there should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service, and that all providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service. 47 U.S.C. § 254(b)(4)-(5).

On the state side, S.C. Code Ann. § 58-9-280(E) provides in part: “In continuing South Carolina’s commitment to universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and/or cost recovery with costs, and consistent with applicable federal policies, the commission shall establish a universal service fund (USF) for distribution to a carrier(s) of last resort.”

South Carolina law defines universal service as “the providing of basic local exchange telephone service, at affordable rates, upon reasonable request, to all residential and single-line business customers within a defined service area.” S.C. Code Ann. § 58-9-10(16). Basic local exchange telephone service means, “for residential and single-line business customers, access to basic voice grade local service with touchtone, access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or equivalent).” S.C. Code Ann. § 58-9-10(9).

“Carrier of last resort” (or “COLR”) is defined in state law as “a facilities-based local exchange carrier . . . which has the obligation to provide basic local exchange telephone service, upon reasonable request, to all residential and single-line business customers within a defined service area.” S.C. Code Ann. § 58-9-10(10).

With this statutory mandate, the Commission held three (3) rounds of hearings in Docket No. 1997-239-C to establish and begin implementation of the State USF. The first proceeding began on August 4, 1997. After a hearing, the Commission adopted guidelines, as required by S.C. Code Ann. § 58-9-280(E), and established the initial size of the fund. See Commission Order Nos. 97-753, 97-942, and 98-201.

In its second proceeding, beginning in November 1997, the Commission primarily addressed the selection of appropriate cost model(s) and methodologies and the sizing of the State USF. See Commission Order No. 98-322. In compliance with Federal Communications Commission (“FCC”) requirements, the Commission adopted a forward-looking cost proxy model for non-rural companies and United Telephone Company of the Carolinas, Inc. (now known as CenturyLink) and adopted an embedded cost methodology for all other rural LECs. Id.

In the third round of hearings held in July 2000, the Commission addressed all the then-remaining issues relating to the State USF and ordered implementation of the State USF beginning October 1, 2001. See Commission Order No. 2001-419. In Order No. 2001-419, this Commission made numerous findings, including important public interest and policy findings, with respect to the State USF. We found that implementation of the State USF is necessary to remove implicit support from rates and make the funding

explicit, and that this will ensure the continuation of universal service to all residential and single-line business customers in South Carolina. Order No. 2001-419 at 32. We found that a system of implicit support for basic local telephone service built into rates for other services cannot be sustained in a competitive environment, and that erosion of the implicit support due to natural competitive forces will adversely impact the availability of affordable basic local telephone service to all South Carolina citizens. Id. at 32.

Rather than making an immediate and dramatic shift from a system of implicit to explicit support, we took a more cautious approach and addressed universal service concerns by ordering a phased-in implementation of the State USF with the first phase effective October 1, 2001. Id. at 33-36. The operation of the State USF and the phase-in from implicit to explicit support are revenue neutral to the ILECs. Id. at 42-43. Before an ILEC may receive any funding from the State USF, that ILEC must first reduce rates containing implicit support, dollar for dollar. Order No. 2001-419 at 42. Since access charges were a prime source of the implicit subsidy for basic local exchange services, we initially approved a reduction in access charges by fifty percent (50%) and allowed the recovery of those revenue amounts from the State USF. Id. at 33. In addition to making a portion of the universal service support explicit, we found that this reduction would bring South Carolina's intrastate access charges more in line with other states in the southeast region and should result in considerable savings to South Carolina consumers. Id.

We also included in the State USF maximum state funding for Lifeline service for low-income consumers. *Id.* at 35. The Lifeline program allows low-income consumers to have access to basic local exchange service at greatly reduced rates, with \$13.50 per month in discounts provided by the ILEC directly to the low-income customer and recovered through state and federal funding. *See, e.g.*, 47 C.F.R. §§ 54.400-54.415 (2008).

We provided for further phases related to additional funding of the State USF, but held that any LEC applying for such funding from the State USF must file detailed cost data with the Commission clearly demonstrating that implicit support exists in the rates the LEC proposes to reduce. Order No. 2001-419 at 35-36.

Regarding contributions to the fund, State law provides that all telecommunications companies providing telecommunications services in South Carolina are required to contribute to the State USF as determined by the Commission. S.C. Code Ann. § 58-9-280(E)(2). In the third proceeding, we found that an explicit uniform percentage surcharge on end user retail revenues is an efficient, fair and competitively neutral method to collect universal service funding, and meets the 1996 Act's requirement to make universal service support explicit. Order No. 2001-419 at 39-40.

We found that the State USF will benefit rural areas by preserving and advancing universal service, and further found that, if a mechanism to ensure the continued provision of affordable basic local exchange telephone service to all citizens were not put into place, customers in rural areas would be most impacted. *Id.* at 44. Without a USF

mechanism, competition would drive prices to cost, and costs are generally much higher for rural customers than for urban customers. Id.

In Commission Order No. 2001-419, we instructed Commission Staff to modify the Administrative Procedures as needed to be consistent with our rulings. The Staff modified both the State USF Guidelines and the State USF Administrative Procedures to reflect all changes ordered by the Commission since our original adoption of guidelines. See Commission Order No. 2001-996 (approving and attaching final documents).

SCCTA and Southeastern Competitive Carriers Association (“SECCA,” a predecessor organization to Competitive Carriers of the South)¹ appealed our orders establishing and implementing the State USF on numerous grounds. The Supreme Court affirmed the Commission’s orders in all substantive respects. Office of Regulatory Staff v. Public Service Commission of South Carolina, 374 S.C. 46, 54, 647 S.E2d 223, 227 (2007).

III. BURDEN OF PROOF

As a threshold matter, we must consider which party bears the burden of proof in this proceeding. At the hearing, CenturyLink, Windstream and SCTC made a motion to have CLECs present their witness first, on the grounds that CLECs were the moving party and thus bore the burden of proof in this case. See Tr. at 9-14. We determined an order of witnesses that we felt was appropriate in light of the circumstances, but expressly deferred the issue of which party, if any, bears the burden of proof. See Tr. at 14, 61.

¹ See Tr. at 267-268.

The Commission established Docket No. 1997-239-C as a generic proceeding to fulfill its statutory obligation to establish the SC USF as required by S.C. Code Ann. § 58-9-280(E). As indicated in Order No. 2009-393, the present docket resulted from an agreement presented to and agreed to by the Senate Judiciary subcommittee during the deliberations on the Customer Choice and Technology Investment Act which became law on May 6, 2009. ORS requested that the Commission prioritize and address separately the issue of whether access lines in a bundle or contract offering should receive a subsidy from the SC USF.

Although we agreed to address this issue separately, the character of this issue comports with the other generic issues relating to the administration of the SC USF decided in Docket No. 1997-239-C. A decision on this matter affects all COLRs and all entities required to contribute to the SC USF. As part of a generic proceeding established by the Commission, no party has the burden of proof. In the early SC USF proceedings that affected all COLRs and entities required to contribute, the COLRs' testimony was presented first.² In later proceedings in Docket No. 1997-239-C proposing modifications to the SC USF and to update cost studies, all parties of record were instructed to file direct testimony on the same date which is consistent with the conclusion that no party has the burden of proof.³ The purpose of a generic proceeding at the Commission is to gather relevant information on an issue that has a far-reaching impact on certain groups

² See *In re: Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C, ("USF") Order Nos. 97-547, 97-726, 97-921, 1999-148, 2001-419.

³ See USF Notice of Prefiling Deadlines dated January 31, 2007, and May 23, 2008.

of utilities. In other generic proceedings, we have also required all parties to prefile their testimony at the same time since no party has a burden of proof.⁴

The SC USF Guidelines and Administrative Procedures were approved by the Commission on October 10, 2001. Order No. 2001-996. The General Assembly deregulated bundles and contract offerings in 2005. ORS petitioned the Commission requesting clarification on certain issues affecting administration of the USF on March 17, 2006. Responses to the petition were received from numerous parties to the docket, including a petition from the South Carolina Cable Television Association that raised several additional issues that also affect the administration of the USF, including the issue of whether any COLRs are receiving USF support based on access lines sold as bundled services and whether such lines should be subsidized.

In 2007, the Commission issued a notice of hearing to address proposed modifications to the Guidelines. The SCTC filed a motion to dismiss and the CLECs responded requesting that the Commission move forward to address additional issues relating to the SC USF including the question of whether any COLRs are receiving SC USF support based on access lines that are part of bundles or contract offerings. CenturyLink contended that the CLECs had the burden of proof in the present hearing

⁴ See Docket No. 2004-316, Order No. 2005-343 *In re: Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law* dated June 20, 2005; Docket No. 2005-15-C, ORS letter to Commission dated March 1, 2005, (ORS requested that the Commission amend the prefiling dates to require all parties to prefile testimony on the same date. “**The present proceeding is a generic proceeding established by the Commission. As a generic proceeding, neither ORS nor any other party has the burden of proof.**”); and Notice of Prefiling Deadlines dated March 3, 2005, *Generic Proceeding Established Pursuant to Commission Order No. 2004-466 to Address the Appropriate Rate Classification for Telephone Lines located in Elevators and Close to Swimming Pools*; Docket No. 2005-191-E, Notice of Prefiling Deadlines dated July 12, 2005, *Generic Proceeding to Explore a Formal Request for Proposal Process for Utilities that are Considering Alternatives for Adding Generating Capacity*.

because the CLECs raised the issue about bundles. The fact that the CLECs raised the issue does not change the character of the issue itself or shift the burden of proof to any one party. We established this generic proceeding to address the impact of a change in the law that deregulated bundles and contract service offerings. The question of whether the SC USF Guidelines should be revised is a question of statutory interpretation and is a generic issue affecting all interested parties. Therefore, we conclude that no party had the burden of proof in this proceeding.

Having said that, we note that our decision would be the same regardless of which party, if any, bears the burden of proof. CenturyLink, Windstream, the SCTC, and ORS presented a convincing case that South Carolina carriers of last resort should continue to be eligible for State USF for the provision of basic local exchange telephone service, regardless of whether the basic local service is provided alone or as part of a bundled or contract service offering.

IV. DISCUSSION AND SUMMARY OF TESTIMONY

Witnesses for CenturyLink, Windstream, SCTC, and ORS all testified that it is in the public interest to continue providing State USF support for basic local exchange telephone service when it is provided in a bundled or contract service offering. See Tr. at 18-19, 107-108, 113, 114, 173-176, 274, 295, 296-297, 350-351. The public interest in ensuring that all South Carolina citizens have access to affordable basic local exchange telephone service remains the same, regardless of whether customers choose to receive only basic local exchange telephone service or to receive that same service along with

other services, and regardless of whether they choose to purchase services pursuant to a tariff or a contract. See, e.g., Tr. at 297.

We have previously found that implementation of the State USF was necessary to remove implicit support from rates and make funding explicit in order to ensure the continued provision of basic local service at affordable rates, upon reasonable request, to all residential and single-line business customers in South Carolina. See Order No. 2001-419 at 32. This is in keeping with our statutory mandate to continue “South Carolina’s commitment to universally available basic local exchange telephone service at affordable rates” See S.C. Code Ann. § 58-9-280(E). Carriers are eligible to receive State USF if they undertake a carrier of last resort (“COLR”) obligation to provide basic local service to all customers making a reasonable request for such service within a designated service area. See S.C. Code Ann. § 58-9-280(E) (“ . . . the commission shall establish a universal service fund (USF) for distribution to a carrier(s) of last resort.” (Emphasis added.)

There is testimony in the record that basic local service is the same functional service, and meets the definition of basic local exchange telephone service in S.C. Code Ann. § 58-9-10(9), regardless of whether it is provided on a stand-alone basis or as part of a bundled or contract service offering. See Tr. at 29, 97-98, 111-112.

The CLECs pointed out that the statute addressing bundles and contracts, S.C. Code Ann. § 58-9-285, was enacted after the State USF was implemented. See Tr. at 82-83, 201. While this is true, other witnesses pointed out that the bundling statute itself expressly continues the Commission’s jurisdiction over distributions from the State USF.

See Tr. at 31, 37, 187, citing S.C. Code Ann. § 58-9-285(C) (“ . . . Nothing in this section affects the commission’s jurisdiction over distributions from the USF pursuant to Section 58-9-280(E).”) The bundling statute provides that the Commission cannot place requirements on bundled or contract service offerings (e.g., pricing, etc.), but the Commission retains authority to regulate the underlying basic local exchange telephone service, i.e., the access line. See, e.g., Tr. at 8, 285. In fact, the bundling statute expressly requires companies to maintain stand-alone tariffs for basic local exchange telephone service even when they are offering bundled or contract services. See S.C. Code Ann. § 58-9-285(A)(1)(a)(iii).

SCTC witness Mr. Oliver testified that changing the operation of the State USF to eliminate funding in the manner suggested by CLECs would be inconsistent with our prior decisions in sizing and implementing the State USF, as affirmed by the Supreme Court. See, e.g., Tr. at 291, 302-304, 313-314. Additionally, Windstream witness William Kreutz testified that allowing State USF support for basic local service included in bundles is consistent with the Commission’s prior decision not to distinguish between primary and secondary lines for purposes of State USF support. See Tr. at 109-119, 121-123; Commission Order No. 2001-419 at p. 43 (“In rural areas, this could mean the difference between a customer having or not having a second line (internet access, etc.”). According to Mr. Kreutz, at the time the Commission made its decision to provide support for secondary lines, most residential customers received internet access over their secondary lines. Today, many customers receive internet access through various bundles

that include high-speed internet service along with the traditional voice line. See Tr. at 121-123.

Several witnesses also testified that ceasing to provide State USF support for basic local service in bundles and contracts would make the State USF inconsistent with federal USF policy and procedures. See Tr. at 107-108, 184, 186-187, 350. The Federal USF does not exclude high-cost funding for basic local service that is included in bundles and contracts. See Tr. at 29, 112. State law requires that the State USF be “consistent with applicable federal policies” and “not inconsistent with applicable federal law.” See S.C. Code Ann. § 58-9-280(E).

CLECs argued that one reason bundled services should not be eligible for USF is because USF is sized based on the cost of providing basic local service minus the maximum amount the company can charge, and if the basic service is in a bundle there is no “maximum amount” the company can charge. See Tr. at 222-223. Other witnesses argued that, as long as the company is required to maintain a stand-alone tariff for basic local service (as it is in the bundling statute), that is the maximum amount the company can charge. SCTC witness H. Keith Oliver explained in his testimony:

By definition, customers buy bundles to save money. They expect discounts off stand-alone prices. If an individual service could be purchased at a lower price on a stand-alone basis, customers would simply buy the stand-alone services individually, or not include a particular service in their bundle. Bundles offer customers a convenient package of services at prices lower than they would pay for individual stand-alone services.

Tr. at 287.

Ms. Hipp testified that ORS, as the Administrator of the State USF, imputes the stand-alone basic local service tariff rate to a bundle that includes basic local service. Tr. at 371. Section 11 of the State USF Guidelines adopted by the Commission (Attachment A to Order No. 2001-996, at p. 9) provides in part: “Until such time as the Commission conducts hearings to establish appropriate maximum rates, the maximum rates for determining universal service support shall be deemed to be the COLR’s tariffed rates for residential and single-line business services.” (Emphasis added.)

Additionally, Mr. Oliver testified that the maximum amount the COLR can charge for basic local service is relevant only in calculating the theoretical maximum size of the fund, which has already been accomplished. Tr. at 283-284. The Commission sized the State USF based on the difference between the cost of providing basic local service and the maximum amount the COLR can charge for that service. See Tr. at 284; S.C. Code Ann. § 58-9-280(E)(4); State USF Guidelines (attached to Order No. 2001-996) at Section 9. This established the theoretical maximum size of the fund for that COLR, or the amount that was needed to cover the COLR’s costs. Tr. at 284; State USF Guidelines at Section 9. This amount is recovered through a combination of implicit support in other rates and State USF. Tr. at 284. The Federal Telecommunications Act of 1996 expressed a policy of moving this support out of rates and into explicit funding mechanisms like the State USF. See Tr. at 284; 47 U.S.C. §§ 254(b)(5), 254(e). Through the State USF, COLRs must identify and remove implicit support in other rates before they can draw State USF. See Tr. at 284; Order No. 2001-419 at 35. The Commission has had extensive, exhaustive hearings to review and approve cost filings before approving

requests for State USF funding. See Tr. at 284; see generally proceedings in Docket No. 1997-239-C. These are not new dollars for the COLR, but simply represent a shift from implicit support to explicit funding. See Tr. at 284. Thus, the maximum amount that a company can charge for basic local service, while being relevant to the calculation of the theoretical maximum amount a company could request, has no real bearing on actual State USF distributions. See Tr. at 284; Order No. 419 at 35-36 (describing phase-in approach); State USF Guidelines at Section 9. Actual distributions represent a dollar-for-dollar (revenue-neutral) replacement of the amount of revenue that is lost when a rate that contains implicit support is reduced. Tr. at 284. Today, in fact, COLRs are actually drawing less than 15% of the theoretical maximum size of the State USF, and that percentage is shrinking. See Tr. at 284-285, 300.

Through cross-examination, counsel for CLECs asked witnesses whether the COLRs have “options” available to them, including giving up the carrier’s COLR obligation. See Tr. at 75-76, 210-211. The COLR witnesses testified that these options would not serve, and in fact would harm, the public interest. See Tr. at 76, 211.

CLECs’ witness Joseph Gillan testified that finding in the COLRs’ favor would “expand” the State USF to “deregulated services,” i.e., to bundles and contracts. See, e.g., Tr. at 232. Other witnesses refuted this assertion, testifying that the State USF was specifically designed by the Commission to fund only basic local exchange service, and that is all it actually supports. Tr. at 92-93, 147, 301, 373; see generally Commission Orders in Docket No. 1997-239-C. Furthermore, State USF support is currently being provided for basic local service regardless of whether it is provided as part of a bundle or

contract offering. Tr. at 291. Therefore, continuing to provide support for basic local service in bundles and contracts will neither “expand” the fund nor provide support for any service other than the basic local service. See Tr. at 300-302.

V. FINDINGS OF FACT

1. Basic local service is the same functional service, and meets the definition of basic local exchange telephone service in S.C. Code Ann. § 58-9-10(9), regardless of whether it is provided on a stand-alone basis or as part of a bundled or contract service offering. See Tr. at 29, 97-98, 111-112.

2. The State USF is efficient, and is funded at far lower levels than originally anticipated. Today, in fact, COLRs are actually drawing less than 15% of the theoretical maximum size of the high-cost portion of State USF, and that percentage is shrinking. See Tr. at 284-285, 300. Concerns about the overall size of the State USF that have been voiced in the past are unfounded. See Tr. at 304 (noting that CLEC witness Mr. Gillan previously testified before us in 2000 that implementation of the State USF would result in a 34.7% ‘tax’ on telecommunications consumers in South Carolina, but that the actual State USF uniform surcharge today stands at less than 3.3%).

3. The State USF provides benefits for all South Carolina citizens by ensuring the integrity and sustainability of the network. The telephone network is unlike other public utilities in that one phone does no one any good. See Tr. at 278. The more people connected to the network, the more valuable the network is. Id. The State USF is of particular benefit to customers in high-cost rural areas, as well as to low-income customers who have access to basic local service at discounted rates through the Lifeline

and Link-up programs funded by the State USF. See, e.g., Tr. at 166 (customers living in highest-cost areas would experience significant harm without continued access to State USF support); Order No. 2001-419 at 35 (including in the State USF the maximum state funding for Lifeline and Link-up for low income consumers).

4. Many customers receive high speed internet service as part of a bundle. See Tr. at 122.

5. The tariffed rate for basic local service represents the maximum amount the COLR can charge for that service, even when it is included in a bundle or contract. See Tr. at 287. ORS, as the Administrator of the State USF, imputes the stand-alone basic local service tariff rate to a bundle that includes basic local service. Tr. at 371.

6. The State USF was specifically designed by the Commission to fund only basic local exchange service, and that is all it actually supports. Tr. at 92-93, 147, 301, 373.

7. Ceasing to provide State USF support for basic local service when it is included in bundles and contracts would be harmful to consumers, because it would likely lead to higher prices for consumers, particularly in rural areas (see, e.g., Tr. at 32, 175-176, 198-199, 295-296, 307-308); and/or limited availability of bundles and contract offerings and, therefore, higher prices for the remaining options available to consumers (see, e.g., Tr. at 32-33, 113, 175-176, 198-199, 295-296, 307-308); and/or possible loss of service due to a lack of carriers of last resort willing and able to serve high-cost rural areas in South Carolina (see, e.g., Tr. at 32, 198-199, 211, 307-308).

VI. CONCLUSIONS OF LAW

1. No party bears the burden of proof in this matter. However, we note that our decision would be the same regardless of which party, if any, bears the burden of proof. CenturyLink, Windstream, the SCTC, and ORS presented a convincing case that South Carolina carriers of last resort should continue to be eligible for State USF for the provision of basic local exchange telephone service, regardless of whether the basic local service is provided alone or as part of a bundled or contract service offering.

2. The South Carolina General Assembly has delegated to the Commission by statute the authority to address all matters related to the State USF, including establishing the State USF and adopting guidelines necessary for the funding and management of the State USF. S.C. Code Ann. § 58-9-280(E). The Supreme Court affirmed in all substantive respects the Commission's determinations regarding sizing and implementing the State USF in the manner in which it currently operates, as well as the Commission's order adopting guidelines and procedures for the operation of the State USF. See Office of Regulatory Staff v. Public Service Commission of South Carolina, 374 S.C. 46, 647 S.E.2d 223 (2007).

3. The South Carolina General Assembly expressly continued the Commission's jurisdiction over distributions from the State USF, notwithstanding any potentially contrary language in the bundling statute. S.C. Code Ann. § 58-9-285(C) ("Nothing in this section affects the commission's jurisdiction over distributions from the USF pursuant to Section 58-9-280(E).").

4. Later, in enacting the Customer Choice and Technology Investment Act of 2009, the South

Carolina General Assembly clearly stated its intent that operation of the State USF would not be changed or disrupted for non-electing carriers, and that the language of the Act should not be considered a determination that only stand-alone basic residential lines should be entitled to support from the State USF. S.C. Code Ann. § 58-9-576(C)(10)-(11).

5. We previously concluded that implementation of the State USF was necessary to remove implicit support from rates and make the funding explicit, and that this would ensure the continuation of universal service to all residential and single-line business customers in South Carolina. See Order No. 2001-419 at 32. The State USF benefits South Carolina citizens, providing support for basic local exchange telephone service provided by COLRs in high-cost areas, thereby ensuring access to basic service at affordable rates, and at rates that are comparable for urban and rural areas. This is consistent with state and federal policy. See S.C. Code Ann. § 58-9-280(E); 47 U.S.C. § 254. In fact, ceasing to provide support for basic local service included in bundles and contracts would be inconsistent with state and federal policy. See, e.g., Tr. at 29, 107-119, 121-123, 184, 186-187, 291, 302-304, 313-314, 350.

6. Carriers are eligible to receive State USF if they undertake a carrier of last resort (“COLR”) obligation to provide basic local service to all customers making a reasonable request for such service within a designated service area. See S.C. Code Ann. § 58-9-280(E) (“ . . . the commission shall establish a universal service fund (USF) for distribution to a carrier(s) of last resort.” (Emphasis added.)

7. The statute addressing bundles and contracts, S.C. Code Ann. § 58-9-285, does not require a different State USF treatment for basic local service included in bundles and contracts. As stated above, the bundling statute expressly preserves the Commission's jurisdiction over distributions from the State USF. See S.C. Code Ann. § 58-9-285(C). Furthermore, the bundling statute does not deregulate access lines as the CLECs suggest. See, e.g., Tr. at 227 (arguing that the Commission should exclude lines that are part of bundles and contracts from State USF). Instead, the bundling statute prohibits the Commission from imposing requirements or otherwise regulating bundled and contract service offerings. S.C. Code Ann. § 58-9-285(B). Thus, while the Commission cannot place requirements on the service offering itself, the Commission retains authority to regulate the underlying basic local exchange telephone service, i.e., the access line. See, e.g., Tr. at 8, 285.

8. The bundling statute is very clear in this regard that companies must continue to maintain stand-alone tariffs for basic local exchange telephone service even when they are offering bundled or contract services. See S.C. Code Ann. § 58-9-285(A)(1)(a)(iii) (one of the requirements of a bundled offering is that "the qualifying LEC has a tariffed flat-rated local exchange service offering for residential customers and for single-line business customers on file with the commission that provides access to the services and functionalities set forth in Section 58-9-10(9) [i.e., basic local exchange telephone service]."). This means the company retains its COLR obligation and must stand ready to serve the customer upon request with basic local exchange telephone service on a stand-alone basis at affordable (Commission-approved tariff) rates. Thus,

the basis for providing State USF support for the underlying access line remains the same.

9. Continuing to make State USF support available for basic local service when it is included in bundles and contracts is consistent with our prior decisions, as affirmed by the Supreme Court, regarding sizing and operation of the State USF. See, e.g., Tr. at 108-112, 121-123, 291, 313-314. Those prior decisions included establishing a maximum size of the fund based on cost models and methodologies, and then allowing the companies, over time, to reduce rates for services that provided implicit support for basic local service and making that funding explicit, on a dollar-for-dollar, revenue-neutral basis. Reducing funding for bundled and contract service offerings at this point would be inconsistent with the manner in which the State USF operates. Carriers have already reduced implicit funding and are receiving explicit funding to recover those reductions. Additionally, many customers receive high speed internet service as part of a bundle. See Tr. at 122. At a time when federal and state policy are strongly encouraging broadband access and use, a policy to cut State USF funding for basic local service that is bundled with high-speed internet access would undercut the objectives of state and federal policy.

10. S.C. Code Ann. § 58-9-285(A)(1)(a)(iii) requires a COLR that provides bundled and contract service offerings to maintain a stand-alone tariff for basic local service. The tariffed rate for basic local service, as a practical matter, represents the maximum amount the COLR can charge for that service, even when it is included in a bundle or contract. See Tr. at 287. ORS, as the Administrator of the State USF, imputes

the stand-alone basic local service tariff rate to a bundle that includes basic local service.

Tr. at 371. In fact, this is exactly what is required by the State USF Guidelines adopted by the Commission. See Section 11 of the State USF Guidelines (Attachment A to Commission Order No. 2001-996, at p. 9), which provides in part:

Until such time as the Commission may conduct hearings to further address maximum rates, the maximum rates for determining universal service support shall be deemed to be the COLR's tariffed rates for residential and single-line business services.

(Emphasis added.) Thus, there is a maximum rate that can be charged for basic local service included in a bundled or contract service offering, and it is the tariffed rate for stand-alone basic local service.

11. In any case, the maximum amount the COLR can charge for basic local service is relevant only in calculating the theoretical maximum size of the fund, which has already been accomplished. See Tr. at 283-284. The Commission sized the State USF based on the difference between the cost of providing basic local service and the maximum amount the COLR can charge for that service, as mandated by S.C. Code Ann. § 58-9-280(E)(4). See Tr. at 284; State USF Guidelines at Section 9. This established the theoretical maximum size of the fund for that COLR. Id. The actual size of the State USF is less than 15% of the theoretical maximum size, and that percentage is shrinking. See Tr. at 284-285, 300. This is because distributions from the State USF are only made after a carrier has demonstrated through cost studies that implicit support is contained in certain rates, and the carrier has reduced those rates that contain implicit support. Only then can the carrier draw State USF, on a dollar-for-dollar basis (i.e., the support is

shifted from implicit support embedded in rates to the explicit State USF funding mechanism).

12. Continuing to make State USF support available for basic local service when it is included in bundles and contracts is consistent with federal law, policy, and procedures. The Federal USF does not exclude high-cost funding for basic local service that is included in bundles and contracts. See Tr. at 29, 112. In fact, the FCC has acknowledged that “the network is an integrated facility that may be used to provide both supported and non-supported services,” and refused to carve out or deny federal high cost USF support to carriers offering advanced services using the same facilities. See Tr. at 361-362, quoting In the Matter of Federal-State Joint Board on Universal Service, Order and Order on Reconsideration, CC Docket No. 96-45 at ¶13 (rel. July 14, 2003). State law requires that the State USF be “consistent with applicable federal policies” and “not inconsistent with applicable federal law.” S.C. Code Ann. § 58-9-280(E).

13. We reject CLECs’ argument that continuing State USF support for basic local service included in bundles and contracts will “expand” the State USF to “deregulated services,” i.e., to bundles and contracts. See, e.g., Tr. at 232. As numerous witnesses pointed out, the State USF was specifically designed by the Commission to fund only basic local exchange service, and that is all it actually supports. Tr. at 92-93, 147, 301, 373. What is at stake is not an expansion of the fund, or even an expansion of the services that are eligible to receive support. It is merely an affirmation of the policy that COLRs receive State USF support for the basic local exchange telephone service

they provide, regardless of how that service is marketed and sold or to what other services the end user may subscribe.

14. Continuing to make State USF support available for basic local service when it is included in bundles and contracts is in the public interest, because it will continue the Commission's commitment, in keeping with the South Carolina General Assembly's mandate, to ensure the continued availability of affordable basic local exchange telephone service for all South Carolina consumers.

15. A finding to the contrary (i.e., accepting CLECs' position that basic local service provided in a bundle or by contract is not eligible for State USF) would be harmful to consumers, because it would likely lead to one or more of the following:

(a) Higher prices for consumers, particularly in rural areas (see, e.g., Tr. at 32, 175-176, 198-199, 295-296, 307-308);

(b) Limited availability of bundles and contract offerings and, therefore, higher prices for the remaining options available to consumers (see, e.g., Tr. at 32-33, 113, 175-176, 198-199, 295-296, 307-308); and/or

(c) Possible loss of service due to a lack of carriers of last resort willing and able to serve high-cost rural areas in South Carolina (see, e.g., Tr. at 32, 198-199, 211, 307-308).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

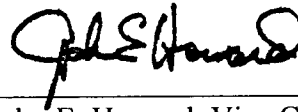
South Carolina carriers of last resort continue to be eligible for State USF for the provision of basic local exchange telephone service, regardless of whether the basic local service is provided alone or as part of a bundled or contract service offering. This decision is based on the findings and conclusions listed above and is:

- (1) consistent with South Carolina law and prior Commission decisions, including:
 - (a) S.C. Code Ann. 58-9-280(E) (requiring the Commission to establish the State USF);
 - (b) the Commission's prior orders, particularly Order No. 2001-419, sizing and establishing the State USF in the revenue-neutral manner in which it currently operates; and
 - (c) the Supreme Court's decision in Office of Regulatory Staff v. Public Service Commission of South Carolina, 374 S.C. 46, 647 S.E.2d 223 (2007), which affirmed the Commission's State USF orders in all substantive respects; and
- (2) consistent with federal law, policy, and procedure, as specifically required by State law. See Tr. at 29, 112 (the Federal USF does not exclude high-cost funding for basic local service that is included in bundles and contracts); S.C. Code Ann. 58-9-280(E) (requiring that the State USF be "consistent with applicable federal policies" and "not inconsistent with applicable federal law"); see also 47 U.S.C. § 254(b) (delineating federal universal service policies); and
- (3) in the best interest of South Carolina's citizens because it will continue the Commission's commitment, in keeping with the South Carolina General Assembly's

directive, to ensure the continued availability of affordable basic local exchange telephone service for all South Carolina consumers.

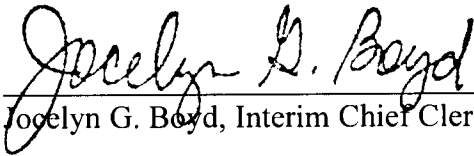
This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



John E. Howard, Vice Chairman

ATTEST:



Jocelyn G. Boyd, Interim Chief Clerk/Administrator

(SEAL)